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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of DAVID FLAGG and DIANA BONNETT.	
DAVID FLAGG, Appellant, v. DIANA BONNETT, Respondent.	A151480 (Contra Costa County Super. Ct. No. MSD11-04154)

The marriage between David Flagg and Diana Bonnett lasted almost 21 years. They had no children. The dissolution was far from amicable. More than four years after it was started, the trial court entered a final judgment in the marital dissolution action Flagg commenced against Bonnett. The trial court filed a detailed 31-page statement of decision, with a two-page attachment of financial calculations. Flagg appeals. We affirm.

BACKGROUND

The statement of decision identified the issues it would address: (1) "the valuation of VIP, Incorporated," described as a community property business, which operates two board and care facilities for developmentally disabled adults who qualify for services through the California Department of Developmental Services, and "the most significant

asset";[1] (2) "reimbursement for payment of community debts"; (3) "temporary and permanent spousal support"; (4) "community real properties"; (5) "attorney's fees"; and (6) "sanctions for frivolous litigation."

The court (1) awarded VIP to Bonnett, together with "the Galt property, which belongs to VIP"; (2) also awarded Bonnett "the marital home in Brentwood"—whose value was not disputed—and the "Modesto property"; (3) ordered that "the $385,00 lien . . . on the Modesto property, if it has not been fully discharged through [Flagg's] bankruptcy, is awarded to Flagg as his separate property debt"; (4) ordered Flagg to pay Bonnett $13,945.21 as "an equalizing payment"; (5) denied Flagg's request for permanent spousal support; and (6) ordered Flagg to pay $20,000 of Bonnett's attorney fees for his "years of bad conduct and bad faith."

Also in the statement of decision is the court's excoriation of Flagg: Flagg's "conduct over the course of the last 5 years is indicative of his self-serving attitude towards the entire dissolution, a dissolution which he filed. He has disregarded one court order after another. He took tens of thousands of dollars' worth of community property and sold it, in violation of court orders, pocketing all of the money he acquired from the sales (to the tune of $136,124.62 . . .).[2] Numerous court hearings and court orders were made about a community property truck he sold for $24,000 and kept the proceeds for himself. Two different judges ordered him to pay sanctions and to reimburse [Bonnett] $21,300 (75% of the sales price) for this flagrant violation. He has yet to pay Bonnett. . . . Flagg owes Bonnett the full $21,300 as it was ordered as a sanction for violating court orders. . . .

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[1] Flagg and Bonnett each own 44 percent of VIP. The remaining 12 percent belongs to Bonnett's daughter, who is the firm's administrator. According to the statement of decision, "VIP has 10 available beds and only 8 were filled." Bonnett "currently manages the two care homes operated by VIP. She works 50-60 hours a week and is on-call 24 hours a day 7 days a week. She supervises 12-13 employees."

[2] The trial court also concluded that Flagg also "drained bank accounts," including "the VIP business account."

"Bonnett sought to have Flagg found in contempt for violating court orders. A third, non-family law judge negotiated a withdrawal of the contempt in exchange for Flagg paying Bonnett's attorney's fees in the amount of $1375 for filing the contempt action. According to that Order, Flagg was to pay Bonnett at the rate of $275 a month beginning on March 1, 2016. Bonnett also sought a domestic violence restraining order against Flagg and was awarded $800 in fees in connection with that proceeding. [He] was ordered to pay that $800 by November 15, 2016. By the fifth day of trial on January 13, 2017, Flagg had finally paid the $2175 in fees that he had been ordered. While this court does not agree with Bonnett's attorney that Flagg is on a 'witch hunt,' the court does believe Flagg cares not one [b]it for the court's orders, Bonnett, or anyone but himself."

"This case has dragged on for years, largely due to Flagg's flagrant violations of court orders requiring long hearings and even contempt hearings. He has been sanctioned in the past and it has not stopped his behavior. He has threatened to pursue criminal charges against Bonnett if she did not agree to his settlement terms. Funded in large part by his father, Flagg has relentlessly pursued this litigation for nearly 6 years now. During that time, Bonnett has shouldered the entire burden of the couple's crushing community debts."[3]

"In contrast to Flagg's use of community assets for his individual needs, Bonnett has been paying almost all, if not all, of the community debt since separation. She has paid approximately $140,912 in post-separation mortgage payments on the Brentwood property, $28,509 post-separation payments for maintenance on the Brentwood property, tens of thousands of dollars on the first and second mortgages on the Modesto property, and thousands of dollars for the PG&E bills for the Brentwood property, including the pool house which Flagg rented out and pocketed the rental income until mid-2015. She also pays Flagg spousal support . . . ."

[3] At other points in the statement of decision, the trial court characterized the community debt as "enormous" and "massive."

REVIEW

The record consists of more than 2,000 pages of clerk's transcript, 800 pages of augmented clerk's transcript, and five volumes of reporter's transcript. Each party has a pending motion (both of which we will grant) to augment the record still further. Although Flagg had counsel at trial, he represents himself on this appeal. He has filed a 110-page opening brief, raising—as best we can determine—62 instances of error. There is a considerable amount of overlap and duplication. There is also an eight-page spreadsheet appended at "Attachment 1." In light of these circumstances, it is important to establish a few guidelines that will keep this opinion to a manageable length.

Flagg may not be a member of the State Bar, and he has the undoubted right to represent himself, but "[a] lay person . . . who exercises the privilege of trying his own case must expect and receive the same treatment as if represented by an attorney—no different, no better, nor worse." (*Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.) He cannot merely assert that error occurred; he must demonstrate it from the record on appeal. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609.)

An appellant's failure to register a proper and timely objection to a ruling or occurrence in the trial court will result in loss of the appellant's right to attack that ruling or occurrence on appeal. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184–185, fn. 1; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400, p. 458.) Thus, " 'an appellate court will not consider claims of error that could have been—but were not—raised in the trial court.' " (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114, quoting *People v. Vera* (1997) 15 Cal.4th 269, 275.)

"[A] brief must contain ' "meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error" ' and contain adequate record citations or else we will deem all points 'to be forfeited as unsupported by "adequate factual or legal analysis." ' " (*Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 942–943; *Clark v. Burleigh* (1992) 4 Cal.4th 474, 481-482 [reviewing court will not consider "a pro forma claim"].) Any "arguments" made by Flagg which are not in compliance with these rules will be summarily rejected.

It is improper for counsel or a party to refer to matters or circumstances not established by the record on appeal and such statements in a brief—and there are many in Flagg's brief—will be disregarded. (*Johnson v. Tago, Inc*. (1986) 188 Cal.App.3d 507, 512, fn. 1.)

Any challenge to the sufficiency of the evidence will not be considered if Flagg has not summarized all of the evidence—not just that favoring him—in his brief. (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887.) "It is neither practical nor appropriate for us to comb the record on [his] behalf." (*Id*. at p. 888.) "We . . . 'cannot be expected to search through a voluminous record to discover evidence on a point raised by [a party]. . . .' " (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113.) What this means is that if a comparison of Flagg's and Bonnett's briefs on the point shows that Bonnett is citing evidence which supports the trial court's decision, and that evidence is not cited or discussed by Flagg, once we verify Bonnett's citations, the point will be summarily decided against Flagg.

Rearguing the evidence, hoping to persuade us that his evidence is more worthy of belief than the evidence credited by the trial judge " 'is doomed to fail.' " (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531.) " 'Where [the] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.' " (*Ibid*.) What this means is if Flagg's brief is a mere reproduction of his written closing argument or his objections to the proposed statement of decision, the point will be treated as rearguing the evidence and summarily rejected.[4]

When Flagg states he "is requesting the court [meaning this court] to disregard all testimony, exhibits, direct or indirect evidence and or schedules/reports relating to any

[4] Concerning which the trial court noted in the statement of decision: "[M]ost of Flagg's 69 pages of Objections consists of re-arguing his case, and the court had already heard, considered, and rejected those arguments . . . to the extent that the Objections point out ambiguities."

work or testimony of Mr. Stegner [Bonnett's expert] and adopt Mr. Tarlson's Forensic report as the most 'reliable source' of information," and that "Stegner's information cannot be relied on," he is asking that we exceed our function. As a court of review, " [w]e neither reweigh the evidence nor reevaluate the credibility of witnesses." (*People v. Jennings* (2010) 50 Cal.4th 616, 638.)

Most/many of Flagg's claims fall to these rules. For example: When Flagg asserts the trial judge had a "temper tantrum" that was indicative of bias that denied him a fair trial," the claim will be rejected because (1) the record does not establish that the judge "lost her temper," much less had a "temper tantrum," (2) the record does not establish that Flagg protested, and (3) Flagg presents no meaningful analysis to demonstrate why the words used in the alleged tantrum deprived him of a fair trial.[5]

Throughout his brief, Flagg cites to comments or remarks by the trial court as if they are definitive impeachment of the ultimate decision. They are not. Oral remarks or comments made by a trial court may not be used to attack subsequently entered findings, order, or judgment. (*Farwell v. Sunset Mesa Property Owners Assn., Inc*. (2008) 163 Cal.App.4th 1545, 1552–1553.) " ' "No antecedent expression of the judge, whether casual or cast in the form of an opinion, can in any way restrict his absolute power to declare his final conclusion . . . by filing the 'decision' . . . provided for by . . . the Code of Civil Procedure." ' " (*Taormino v. Denny* (1970) 1 Cal.3d 679, 684.)

Flagg at several points in his opening brief refers to the equitable defense of unclean hands. He states, on page 45 of his opening brief: Bonnett "entirely made up the story of a fake loan in an effort to scam the Galt house from Flagg is bought with unclean hands. Full argument is made in the UNCLEAN HANDS LEGAL ARGUMENT section below." However, on page 60 of his opening brief, under the heading "UNCLEAN HANDS LEGAL ARGUMENT," is the following: Bonnett "holding back financial information made the valuation of the business much more challenging than it needed to

[5] Flagg's opening brief abounds with remarks disparaging the trial judge. We are singularly unimpressed by this practice, which does not advance Flagg's cause. The same is true concerning remarks aimed at his former wife.

be. Bonnett deceived Stegner [who is described in the statement of decision as Bonnett's 'forensic accounting expert'] by giving him selective information to guide him to a compartmentalized small view of the company to benefit her and steal the company from Flagg is also a breach of fiduciary duty." And, commencing on pages 102 under the heading "GENERAL LEGAL ARGUMENT, UNCLEAN HANDS LEGAL ARGUMENT," on pages 103 and 104, are a number of generalized principles of the unclean hands defense.

None of this constitutes a contention in a form we must address. It is based on the presumed deceit of Bonnett, which is merely asserted, not established by the record. There are no citations to the trial record. Flagg cites to nothing showing that he raised the matter of Bonnett's unclean hands in the trial court. It is not mentioned in his trial brief or in his voluminous objections to the proposed statement of decision, leading to the conclusion that it is appearing here for the first time. Finally, the unclean hands defense is available only if the party invoking it has clean hands himself. (See *Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1110.) In light of the trial court's comments quoted above, it would be a formidable burden to convince us that Flagg's hands were clean. He makes no attempt to do so beyond raising unsubstantiated attacks on others.

A major focus of Flagg's brief is to discredit the testimony of Jeff Stegner. Flagg argues Stegner's testimony was "hearsay, un-certifiable and inadmissible." Stegner's testimony was "flawed beyond salvaging" because it was based solely on "selective information from" Bonnett. Stegner also "ignor[ed] evidence that held more weight," that being evidence that favored Flagg. Very naturally, Flagg prefers the testimony of his own expert, Nick Tarlson, so much so that he "is asking [this] court to remove all testimony and exhibits relating to anything produced by Stegner, and adopt the testimony and certified forensic reports and appraisal of Tarlson." None of this will prevail.

Flagg's counsel at trial had "No objection" to Stegner being designated as "an expert in business valuations, and . . . an accounting expert, as well." He conceded that he did "not prepare a full report for Bonnett due to financial constraints." Stegner explained how he reached the conclusion that VIP was worth only $10,000 (Tarlson

testified the value of VIP declined from $729,00 in 2011, to $333,000 at the time of trial). Stegner's calculations were recorded on "my Schedule 1.0, which is Exhibit AA." At the conclusion of Stegner's direct testimony, when Bonnett's counsel moved that "Exhibit AA" be received in evidence, Flagg's counsel responded, "No objection." Stegner was cross-examined at length.

Even accepting, solely for purposes of argument, that Stegner's testimony was in any sense "flawed," it will not benefit Flagg.

"It is elementary law that incompetent statements . . . become competent evidence when admitted without objection." (*Vartanian v. Croll* (1953) 117 Cal.App.2d 639, 647–648; accord, 9 Witkin, Cal. Procedure, *supra*, Appeal, § 369, p. 427 ["Incompetent or otherwise inadmissible evidence admitted without objection will sustain the judgment"].) "The lack of timely objection to the hearsay rendered it competent evidence and removes all power in this court to reverse." (*Frudden Enterprises, Inv. v Agricultural Labor Relations Bd.* (1984) 153 Cal.App.3d 262, 269, 270.) Moreover, as already noted, Flagg cannot get us to reweigh the evidence by deciding Tarlson's testimony is more credible than Stegner's, particularly in the face of the trial court's express credibility determination that Stegner's testimony was "more persuasive."

Flagg insists he is entitled to a "Watts Credit"—without explaining what that is—of $78,125 for the Brentwood property. He cites his own testimony and argues the trial court should not have accepted the testimony of realtor Michele Lane because "Lane conceded she was not an expert on rentals, her admitted non expert advice on whether a property needs permission to be rented shall be considered weak evidence, and stricken from the record. Lane did not say the property could not be rented." But a quick glance shows that Flagg never objected to Lane's testimony, and even stipulated "she's an expert in real estate." The reason? *Lane was Flagg's witness*. Flagg makes no mention of the trial court's analysis in the statement of decision, which shows that the decision to reject his Watts claim as "misplaced" was based on the testimony of Tom Blair, about whom, the court noted "The parties stipulated to his expertise in real estate appraisals." The trial

court expressly determined that Blair's opinion was "more persuasive" than that of Tami Gosselin, Flagg's other expert witness.

Flagg also claims he should have been given an "Epstein credit" of $9,401, again without explaining what this means, because the trial court was "confused" and erroneously concluded "there was no testimony to any figure of $9,401." But this was not the trial court's final word on the subject: "Moreover, the uncontradicted evidence is that [Bonnett] paid 100% of the maintenance out of post-separation funds." Flagg says nothing about this alternative basis supporting the challenged finding. "When a trial court states multiple grounds for its ruling and appellant address only some of them, we need not address appellant's arguments because 'one good reason is sufficient to sustain the order from which the appeal was taken.' " (*People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1237.)

Concerning the trial court's sanction order, Flagg quotes an excerpt from the reporter's transcript that clearly deals with the contempt citation, not the statutory sanctions addressed in the statement of decision and states that Bonnet "was caught in multiple lies" and the trial court ignored "numerous evidence and testimony." An award of attorney fees under Family Code section 271 is reviewed for abuse of discretion, meaning " 'we will overturn such an order only if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.' " (*In re Marriage of Falcone and Fyke* (2012) 203 Cal.App.4th 964, 995.) The trial explained why it concluded the $20,000 assessed "seems quite modest in light of bad conduct and bad faith exhibited by Flagg." Flagg does not even acknowledge the existence of this language and the supportive reasoning, much less undertake to demonstrate why " 'no judge could reasonably make the order.' "

Flagg spends six pages in his opening brief trying to establish that he owns 50 percent of real property in Galt worth $151,000. Unmentioned in those six pages is the trial court's finding that he "sold his interest in it to satisfy his debt to VIP," that debt being $80,000 Flagg had " 'borrowed' from VIP."

The few remaining claims in Flagg's opening brief can be classed as dealing with the trial court's division of personal property. Family Code section 2550 requires the trial court in a marital dissolution action to value and equally divide the parties' community property estate, unless the parties have agreed otherwise. " '[T]he court must distribute both the assets and the obligations of the community so that the residual assets awarded to each party after the deduction of the obligations are equal.' " (*In re Marriage of Walrath* (1998) 17 Cal.4th 907, 924.) The trial court has broad discretion in discharging its duty to divide community property in a way that is not only mathematically equal, but practical and equitable as well. (*In re Marriage of Fink, supra,* 25 Cal.3d at p. 885; Fam. Code, §§ 2550, 2010, subd. (e).) " '[T]he disposition of marital property is within the trial court's discretion, by whatever method of formula will "achieve substantial justice between the parties." ' " (*In re Marriage of Steinberger* (20101) 91 Cal.App.4th 1449, 1459.) "Issues concerning the valuation and apportionment of community property are reviewed for abuse of discretion." (*In re Marriage of Finby* (2013) 222 Cal.App.4th 977, 984.)

Flagg has not demonstrated that " 'no judge could reasonably make the [property division].' "

The trial court spent a good deal of the statement of decision addressing the division of property. Two intangible factors seem to have been prominent. First, Bonnett was "shoulder[ing] the entire burden of the couple's crushing community debts," including "100 percent of the maintenance [of the Brentwood and Modesto properties] out of post-separation funds" while Flagg "paid nothing." Second, Flagg had converted $136,124.62 of community assets to his own use. Flagg never squarely confronts either defense points in his lengthy brief. Largely, he merely asserts that a specific property is his, or he cites to evidence favoring him. As already shown, that is insufficient to obtain a reversal. (*Jameson v. Desta, supra,* 5 Cal.5th at pp. 608–609; *In re Marriage of Fink, supra,* 25 Cal.3d at p. 887; *Fernandes v. Singh, supra,* 16 Cal.App.5th at pp. 942–943.)

Additionally, Flagg does not mention the trial court's determination that most of his "reimbursement requests . . . are not supported by any evidence presented at trial."

The court was later more emphatic: Flagg's "closing and his accompanying spreadsheet dividing what he perceives to be the existing assets and debts are not based in any reality or evidence presented at trial. This court has not attempted to address everything listed in Flagg's spreadsheet as one claim after another seems created out of thin air. No evidence supports these claims. Indeed, Flagg's spreadsheet viewed as a whole would award the majority of assets to Flagg and nearly 70% of debt to Bonnett." Avoiding such a result does not amount to an abuse of the trial court's discretion.

DISPOSITION

The motions to augment the record are granted. The judgment is affirmed. Respondent Bonnett shall recover her costs of appeal.

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Kline, P.J.

We concur:

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Richman, J.

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Stewart, J.

In re Marriage of Flagg and Bonnett (A151480)